

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

MILDRED E. KIEF,)	
)	
PLAINTIFF)	
)	
v.)	CIVIL No. 1:18-cv-35-DBH
)	
WRIGHT MEDICAL TECHNOLOGY,)	
INC.,)	
)	
DEFENDANT)	

ORDER ON MOTION TO DISMISS

This is a products liability lawsuit against a medical technology company for an allegedly defective orthopedic product used in a hip transplant. On March 9, 2018, the defendant filed a partial motion to dismiss and motion to strike, seeking to dismiss Counts 5, 6, and 7 of the Complaint and to strike the plaintiff's demand for double or treble damages, attorney fees, expenses and costs. Def.'s Mot. (ECF No. 7). The deadline to respond has passed. The plaintiff filed an Amended Complaint on March 29, 2018 (ECF No. 11), as she was entitled to do under Fed. R. Civ. P. 15(a)(1)(B), but she did not otherwise respond to the motion to dismiss, and it is therefore ripe for ruling.

The Amended Complaint no longer contains a Count 7. That part of the defendant's motion therefore is **Moot**.

The plaintiff has not responded to the defendant's argument that Maine law (the lawsuit presents only state law claims asserting jurisdiction based on diversity of citizenship) does not allow doubling or trebling damages, attorney

fees, expenses and costs for these state law tort claims, although she continues to assert those claims for relief. I agree that Maine law does not recognize such remedies in tort claims like these, and I therefore **GRANT** the motion to strike.

Counts 5 and 6 claim fraud by concealment and fraudulent misrepresentation. In her Amended Complaint, the plaintiff has substantially enlarged her allegations on these claims. Accordingly I **DENY** the defendant's motion to dismiss Counts 5 and 6 of the original Complaint, but **WITHOUT PREJUDICE** given that the Amended Complaint is now the operative pleading.

SO ORDERED.

DATED THIS 3RD DAY OF APRIL, 2018

/s/D. BROCK HORNBY

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE